IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC APP. No.908/2005

Judgment delivered on: December 10 ,2007

National Insurance Co. Ltd. ..... Appellant.
Through: Ms.Manjusha Wadhwa, Adv.

versus

Sh.Shashi Kwatra & Ors. ..... Respondents
Through: Mr.Ashok Mahipal, Adv. for respondent No.1 to 3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

KAILASH GAMBHIR, J. Oral:

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By way of this appeal, the appellant seeks to challenge the impugned award dated 20.10.2005 mainly on the ground that the respondents have committed a fraud in not disclosing the

correct age of the deceased.

The contention of counsel for the appellant is that deceased was more than 55 years of age at the relevant time of accident. Counsel for the appellant has drawn my attention to the monthly pay slip of the deceased issued from his Office i.e. Air Force Central Accounts Office in which against the relevant column of date of birth mentioned in the abbreviated form i.e. BRDT, the date of birth mentioned is 10.10.1947. In the photocopy of the said pay slip, the said date is not clearly legible. Counsel for the appellant has placed on record another photocopy of the said pay slip. The same is taken on record. Perusal of the said monthly pay slip clearly reveals that against the said column of BRDT, the date of birth has been shown as 10.10.1947. Even the copies of ration card and election card placed on record supports the said contention of counsel for the appellant.

Based on the said documents, counsel for the appellant contends that it is a clear cut case of fraud on the part of the respondents in not placing on record the correct date of birth of the deceased. Counsel thus sought to urge that the Tribunal has wrongly applied the multiplier of 15 taking the age of deceased at 45 years. Confining her arguments to this aspect of the case,

counsel contends that the finding of the Tribunal to that extent be set aside.

Mr.Ashok Mahipal, counsel appearing for the respondent very fairly concedes that the said recording of date of birth was on account of sheer mistake on the part of the claimants. Counsel contends that no fraud has been committed by the respondent.

Perusal of the award shows that the Tribunal has taken the age of the deceased at 45 years after placing reliance on the statement of PW-2 and PW-3 and accordingly has applied the multiplier of 15. There is an apparent fallacy in the said finding of the Tribunal. As per the documents placed on record the deceased was admittedly more than 55 years of age. Counsel for the respondent states that he has no objection if the finding of the Tribunal to that extent be set aside and award is passed considering the age of the deceased on the relevant date of accident as based on his date of birth as 10.10.1947.

In the light of the above submissions, the multiplier of 15 is reduced to 8 as laid down in the IInd Schedule of the Motor Vehicles Act. The Tribunal has applied the criteria laid down in **Sarla Dixit's** case and thus has given the benefit of future

prospects for considering the loss of dependancy. The aspect of future prospects apparently has been taken into consideration after taking the age of deceased as 45 years. The deceased at the relevant time of accident was Principal Private Secretary in Ministry of Defence and would have remained in service till the age of 60 years. The Tribunal has taken a mean of the average income of the deceased after doubling the income of the deceased. Since now the multiplier has been reduced from 15 to 8 years, therefore, the deceased at the most would have remained in service for a period of not more than 5 years. The income of the deceased cannot be assumed to have doubled in the short period of 5 years. Considering these facts, the income of the deceased can be taken to have arisen not exactly double but at least by 50% of the same and applying the same yardstick as laid down in **Sarla Dixit's case,** the yearly income of the deceased would come to Rs.2,85,620/- and after deducting 1/3rd of the income towards personal expenses, the loss of dependancy to the respondents would come to Rs.190413/- and after applying multiplier of 8, the loss of dependancy will come out as Rs.15,23,307/-. The total compensation thus would come to Rs.1551442/-. Since the above mistake on the part of the

respondents compelled the appellant to challenge the award, therefore, no interest shall be payable to respondents from the date of filing the appeal till the passing of the present order.

The appellant has already deposited 50% of the award amount. Let the appellant deposit the remaining award amount, if any, with the Tribunal and thereafter the amount shall be disbursed in favour of the claimants in the same manner as directed by the Tribunal. In case the entire award amount has been received by the respondents then the remaining amount in excess of the above shall be paid by the respondents to the appellant. Since the appellant is yet to bring on record the legal heirs of the deceased respondent No.4 or in the alternative to satisfy this Court about the eligibility of the legal heirs left by the deceased victim to claim the compensation amount, therefore, till the decision on this aspect is taken by the Court, the amount of compensation shall be disbursed in favour of the claimants other than the legal heirs which were claiming rights through respondent No.4.

With the above directions, the present appeal is disposed of.

December 10, 2007 **KAILASH GAMBHIR, J.**

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